

AMENDED IN SENATE AUGUST 18, 2015

AMENDED IN SENATE JULY 1, 2015

AMENDED IN ASSEMBLY JUNE 3, 2015

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1142

Introduced by Assembly Member Gray

February 27, 2015

An act to amend Sections 2207, 2715.5, 2733, 2770, 2772, 2773.1, 2774, and 2774.2 of, and to add Sections 2736, 2772.1, and 2773.4 to, the Public Resources Code, relating to mining and geology.

LEGISLATIVE COUNSEL’S DIGEST

AB 1142, as amended, Gray. Mining and geology: surface mining.

(1) The Surface Mining and Reclamation Act of 1975 prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a permit is obtained from, a specified reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation of the surface mining operation.

This bill would revise and recast provisions of the act related to the approval of reclamation plans and, among other things, would require a reclamation plan filed by an operator of a surface mining operation with a lead agency to include specified reclamation maps; require a lead agency, when submitting a proposed reclamation plan to the

Director of Conservation, to incorporate specified items of information and documents in the submitted reclamation plan within certain timeframes; and, require the director to take certain actions upon receiving a proposed reclamation plan. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill would revise and recast provisions of the act related to financial assurances and, among other things, would require financial assurance cost estimates *to* be submitted for review and include estimates of the time needed to complete reclamation of the mine; require an operator to replace an approved financial assurance only if the financial assurance cost estimate identifies a need to increase the amount of the financial assurance; require a lead agency to submit a surface mining operation's proposed financial assurance cost estimate to the director for review, as specified; ~~and, and~~ require the director to take certain actions upon receiving a financial assurance cost estimate from a lead agency. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill also would require a lead agency or the State Mining and Geology Board to conduct a specified public hearing if the lead agency has evidence that an operator may be financially incapable of performing reclamation in accordance with its approved reclamation plan or that the operator has abandoned a surface mining operation without completing reclamation and to take appropriate actions ~~to seize forfeit~~ the operator's financial assurances if warranted following that hearing.

(2) The act requires the owner or operator of a mining operation to forward annually to the director and the lead agency a report that provides, among other things, proof of annual inspection by the lead agency. The act also requires every lead agency to adopt ordinances that establish procedures for the review and approval of reclamation plans, and, before approving a reclamation plan, to submit the plan to the director. The act requires a lead agency to inspect a surface mining operation within 6 months of receiving a specified report and to conduct an inspection no less than once every calendar year. The act authorizes a lead agency to cause an inspection to be conducted by ~~a state-licensed~~ *state-licensed* geologist, ~~state-licensed~~ *state-licensed* civil engineer, ~~state-licensed~~ *state-licensed* landscape architect, or ~~state-licensed~~ *state-licensed* forester, as specified.

This bill would revise and recast those provisions and, among other things, would require the owner or operator to provide a copy of the previously completed annual inspection form and a requested date for the next annual inspection by the lead agency; authorize a lead agency to cause an inspection to be conducted by an unlicensed employee of the lead agency who meets specified criteria and who, after January 1, 2018, has completed an inspection workshop, as provided; impose new requirements on the lead agency related to the timing of inspections; impose timelines on a lead agency related to the submission of an application for a permit to conduct a surface mining operation; and require the director to provide an inspection workshop and update workshop for lead agency employees who inspect surface mining operations after January 1, 2018. By adding to the duties of ~~local agencies~~ *a local government acting as a lead agency*, this bill would impose a state-mandated local program.

(3) The act requires that the lead agency have primary responsibility in enforcing the act. The act authorizes, in cases where the board is not the lead agency, the director to initiate enforcement actions if the lead agency has been notified by the director, for at least 15 days, of a violation and has not taken appropriate enforcement action, or the director determines there is a violation that presents an imminent and substantial endangerment to the public health or safety or the environment. The act establishes procedures and timelines for an operator to have an order setting administrative penalties reviewed by a legislative body of a lead agency, the board, or a superior court.

This bill, after the expiration of a specified review period, would authorize the director or the board when it acts as a lead agency to apply to the small claims court or the superior court, as appropriate, for a judgment to collect an unpaid administrative penalty.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 2207 of the Public Resources Code is amended to read:

2207. (a) The owner or the operator of a mining operation within the state shall forward to the director annually, not later than a date established by the director, upon forms approved by the board from time to time, a report that identifies and contains all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, director, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Office of Mine Reclamation or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7½-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) A copy of the previously completed annual inspection form and a requested date for the next annual inspection by the lead agency.

(9) Proof of financial assurances.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

1 (13) The approximate total of disturbed acreage reclaimed during
2 the previous calendar year.

3 (14) The approximate total unreclaimed disturbed acreage
4 remaining as of the end of the calendar year.

5 (15) The total production for each mineral commodity produced
6 during the previous year.

7 (16) A copy of any approved reclamation plan and any
8 amendments or conditions of approval to any existing reclamation
9 plan approved by the lead agency.

10 (b) (1) Every year, not later than the date established by the
11 director, the person submitting the report pursuant to subdivision
12 (a) shall forward to the lead agency, upon forms furnished by the
13 board, a report that provides all of the information specified in
14 subdivision (a).

15 (2) The owner or operator of a mining operation shall allow
16 access to the property to any governmental agency or the agent of
17 any company providing financial assurances in connection with
18 the reclamation plan in order that the reclamation can be carried
19 out by the entity or company, in accordance with the provisions
20 of the reclamation plan.

21 (c) Subsequent reports shall include only changes in the
22 information submitted for the items described in subdivision (a),
23 except that, instead of the approved reclamation plan, the reports
24 shall include any reclamation plan amendments approved during
25 the previous year. The reports shall state whether review of a
26 reclamation plan, financial assurances, or an interim management
27 plan is pending under subdivision (b), (c), (d), or (h) of Section
28 2770, or whether an appeal before the board or lead agency
29 governing body is pending under subdivision (e) or (h) of Section
30 2770. The director shall notify the person submitting the report
31 and the owner's designated agent in writing that the report and the
32 fee required pursuant to subdivision (d) have been received, specify
33 the mining operation's mine number if one has not been issued by
34 the Office of Mine Reclamation, and notify the person and agent
35 of any deficiencies in the report within 90 days of receipt. That
36 person or agent shall have 30 days from receipt of the notification
37 to correct the noted deficiencies and forward the revised report to
38 the director and the lead agency. Any person who fails to comply
39 with this section, or knowingly provides incorrect or false
40 information in reports required by this section, may be subject to

1 an administrative penalty as provided in subdivision (c) of Section
2 2774.1.

3 (d) (1) The board shall impose, by regulation, pursuant to
4 paragraph (2), an annual reporting fee on, and method for collecting
5 annual fees from, each active or idle mining operation. The
6 maximum fee for any single mining operation may not exceed four
7 thousand dollars (\$4,000) annually and may not be less than one
8 hundred dollars (\$100) annually, as adjusted for the cost of living
9 as measured by the California Consumer Price Index for all urban
10 consumers, calendar year averages, using the percentage change
11 in the previous year, beginning with the 2005–06 fiscal year and
12 annually thereafter.

13 (2) (A) The board shall adopt, by regulation, a schedule of fees
14 authorized under paragraph (1) to cover the department's cost in
15 carrying out this section and Chapter 9 (commencing with Section
16 2710), as reflected in the Governor's proposed Budget, and may
17 adopt those regulations as emergency regulations. In establishing
18 the schedule of fees to be paid by each active and idle mining
19 operation, the fees shall be calculated on an equitable basis
20 reflecting the size and type of operation. The board shall also
21 consider the total assessed value of the mining operation, the
22 acreage disturbed by mining activities, and the acreage subject to
23 the reclamation plan.

24 (B) Regulations adopted pursuant to this subdivision shall be
25 adopted by the board in accordance with the Administrative
26 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
27 Part 1 of Division 3 of Title 2 of the Government Code). The
28 adoption of any emergency regulations pursuant to this subdivision
29 shall be considered necessary to address an emergency and shall
30 be considered by the Office of Administrative Law to be necessary
31 for the immediate preservation of the public peace, health, safety,
32 and general welfare.

33 (3) The total revenue generated by the reporting fees may not
34 exceed, and may be less than, the amount of three million five
35 hundred thousand dollars (\$3,500,000), as adjusted for the cost of
36 living as measured by the California Consumer Price Index for all
37 urban consumers, calendar year averages, using the percentage
38 change in the previous year, beginning with the 2005–06 fiscal
39 year and annually thereafter. If the director determines that the
40 revenue collected during the preceding fiscal year was greater or

1 less than the cost to operate the program, the board shall adjust
2 the fees to compensate for the overcollection or undercollection
3 of revenues.

4 (4) (A) The reporting fees established pursuant to this
5 subdivision shall be deposited in the Mine Reclamation Account,
6 which is hereby created. Any fees, penalties, interest, fines, or
7 charges collected by the director or board pursuant to this chapter
8 or Chapter 9 (commencing with Section 2710) shall be deposited
9 in the Mine Reclamation Account. The money in the account shall
10 be available to the department and board, upon appropriation by
11 the Legislature, for the purpose of carrying out this section and
12 complying with Chapter 9 (commencing with Section 2710), which
13 includes, but is not limited to, classification and designation of
14 areas with mineral resources of statewide or regional significance,
15 reclamation plan and financial assurance review, mine inspection,
16 and enforcement.

17 (B) (i) In addition to reporting fees, the board shall collect five
18 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of
19 silver mined within the state and shall deposit the fees collected
20 in the Abandoned Mine Reclamation and Minerals Fund
21 Subaccount, which is hereby created in the Mine Reclamation
22 Account. The department may expend the moneys in the
23 subaccount, upon appropriation by the Legislature, for only the
24 purposes of Section 2796.5 and as authorized herein for the
25 remediation of abandoned mines.

26 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees
27 collected pursuant to clause (i) may also be used to remediate
28 features of historic abandoned mines and lands that they impact.
29 For the purposes of this section, historic abandoned mines are
30 mines for which operations have been conducted before January
31 1, 1976, and include, but are not limited to, historic gold and silver
32 mines.

33 (5) In case of late payment of the reporting fee, a penalty of not
34 less than one hundred dollars (\$100) or 10 percent of the amount
35 due, whichever is greater, plus interest at the rate of 1 ½ percent
36 per month, computed from the delinquent date of the assessment
37 until and including the date of payment, shall be assessed. New
38 mining operations that have not submitted a report shall submit a
39 report prior to commencement of operations. The new operation
40 shall submit its fee according to the reasonable fee schedule

1 adopted by the board, and the month that the report is received
2 shall become that operation's anniversary month.

3 (e) The lead agency, or the board when acting as the lead agency,
4 may impose a fee upon each mining operation to cover the
5 reasonable costs incurred in implementing this chapter and Chapter
6 9 (commencing with Section 2710).

7 (f) For purposes of this section, "mining operation" means a
8 mining operation of any kind or character whatever in this state,
9 including, but not limited to, a mining operation that is classified
10 as a "surface mining operation" as defined in Section 2735, unless
11 excepted by Section 2714. For the purposes of fee collections only,
12 "mining operation" may include one or more mines operated by
13 a single operator or mining company on one or more sites, if the
14 total annual combined mineral production for all sites is less than
15 100 troy ounces for precious metals, if precious metals are the
16 primary mineral commodity produced, or less than 100,000 short
17 tons if the primary mineral commodity produced is not precious
18 metals.

19 (g) Any information in reports submitted pursuant to subdivision
20 (a) that includes or otherwise indicates the total mineral production,
21 reserves, or rate of depletion of any mining operation may not be
22 disclosed to any member of the public, as defined in subdivision
23 (b) of Section 6252 of the Government Code. Other portions of
24 the reports are public records unless excepted by statute. Statistical
25 bulletins based on these reports and published under Section 2205
26 shall be compiled to show, for the state as a whole and separately
27 for each lead agency, the total of each mineral produced therein.
28 In order not to disclose the production, reserves, or rate of depletion
29 from any identifiable mining operation, no production figure shall
30 be published or otherwise disclosed unless that figure is the
31 aggregated production of not less than three mining operations. If
32 the production figure for any lead agency would disclose the
33 production, reserves, or rate of depletion of less than three mining
34 operations or otherwise permit the reasonable inference of the
35 production, reserves, or rate of depletion of any identifiable mining
36 operation, that figure shall be combined with the same figure of
37 not less than two other lead agencies without regard to the location
38 of the lead agencies. The bulletin shall be published annually by
39 June 30 or as soon thereafter as practicable.

1 (h) The approval of a form by the board pursuant to this section
2 is not the adoption of a regulation for purposes of the
3 Administrative Procedure Act (Chapter 3.5 (commencing with
4 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
5 Code) and is not subject to that act.

6 SEC. 2. Section 2715.5 of the Public Resources Code is
7 amended to read:

8 2715.5. (a) The Cache Creek Resource Management Plan, in
9 conjunction with a site specific plan deemed consistent by the lead
10 agency with the Cache Creek Resource Management Plan, until
11 December 31, 2017, shall be considered to be a functional
12 equivalent of a reclamation plan for the purposes of this chapter.
13 No other reclamation plan shall be required to be reviewed and
14 approved for any excavation project subject to the Cache Creek
15 Resource Management Plan that is conducted in conformance with
16 an approved site specific plan that is consistent with the Cache
17 Creek Resource Management Plan and the standards specified in
18 that plan governing erosion control, channel stabilization, habitat
19 restoration, flood control, or infrastructure maintenance, if that
20 plan is reviewed and approved by a lead agency pursuant to this
21 chapter.

22 (b) For the purposes of this section, the board of supervisors of
23 the county in which the Cache Creek Resource Management Plan
24 is to be implemented shall prepare and file the annual report
25 required to be prepared pursuant to Section 2207.

26 (c) Nothing in this section precludes an enforcement action by
27 the board or the department brought pursuant to this chapter or
28 Section 2207 if the lead agency or the director determines that a
29 surface mining operator, acting under the authority of the Cache
30 Creek Resource Management Plan, is not in compliance with the
31 requirements of this chapter or Section 2207.

32 (d) For purposes of this section, “site specific plan” means an
33 individual project plan approved by the lead agency that is
34 consistent with the Cache Creek Resource Management Plan. Site
35 specific plans prepared in conformance with the Cache Creek
36 Resource Management Plan shall include, at a minimum, the
37 information required pursuant to subdivision (c) of Section 2772,
38 shall comply with the requirements of Article 9 (commencing with
39 Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title
40 14 of the California Code of Regulations, and shall be provided

1 along with a financial assurance estimate to the department for
2 review and comment pursuant to Section 2772.1 or 2773.4, as
3 applicable. Notwithstanding the number of days authorized by
4 subdivision (b) of Section 2772.1 or subdivision (c) of Section
5 2773.4, the department shall review the site specific plan and the
6 financial assurance estimate and prepare any written comments
7 within 15 days from the date of receipt of the plan and the estimate.

8 (e) Prior to engaging in an excavation activity in conformance
9 with the Cache Creek Resource Management Plan, a surface mining
10 operation shall be required to obtain financial assurances that meet
11 the requirements of Section 2773.1.

12 (f) This section shall remain in effect only until December 31,
13 2017, and as of that date is repealed, unless a later enacted statute
14 that is enacted before December 31, 2017, deletes or extends that
15 date.

16 SEC. 3. Section 2733 of the Public Resources Code is amended
17 to read:

18 2733. "Reclamation" means the combined process of land
19 treatment that minimizes water degradation, air pollution, damage
20 to aquatic or wildlife habitat, flooding, erosion, and other adverse
21 effects from surface mining operations, including adverse surface
22 effects incidental to underground mines, so that mined lands are
23 reclaimed to a usable condition that is readily adaptable for
24 alternate land uses and create no danger to public health or safety.
25 The process may extend to affected lands surrounding mined lands,
26 and may require backfilling, grading, resoiling, revegetation, soil
27 compaction, slope stabilization, or other measures.

28 SEC. 4. Section 2736 is added to the Public Resources Code,
29 to read:

30 2736. "Financial assurances" means a current approved
31 financial assurance cost estimate and a financial assurance
32 mechanism that is at least equal to the current approved financial
33 assurance cost estimate.

34 SEC. 5. Section 2770 of the Public Resources Code is amended
35 to read:

36 2770. (a) Except as provided in this section, a person shall not
37 conduct surface mining operations unless a permit is obtained
38 from, a reclamation plan has been submitted to and approved by,
39 and financial assurances for reclamation have been approved by
40 the lead agency for the operation pursuant to this article.

1 (b) A person with an existing surface mining operation who has
2 vested rights pursuant to Section 2776 and who does not have an
3 approved reclamation plan shall submit a reclamation plan to the
4 lead agency not later than March 31, 1988. If a reclamation plan
5 application is not on file by March 31, 1988, the continuation of
6 the surface mining operation is prohibited until a reclamation plan
7 is submitted to the lead agency. For the purposes of this
8 subdivision, a reclamation plan existing prior to January 1, 2016,
9 may consist of all or the appropriate sections of any plans or written
10 agreements previously approved by the lead agency or another
11 agency, together with any additional documents needed to
12 substantially meet the requirements of Sections 2772 and 2773
13 and the lead agency surface mining ordinance adopted pursuant
14 to subdivision (a) of Section 2774, provided that all documents,
15 which together were proposed to serve as the reclamation plan,
16 are submitted for approval to the lead agency in accordance with
17 this chapter.

18 (c) The review of financial assurances shall not be considered
19 a project for purposes of the California Environmental Quality Act
20 (Division 13 (commencing with Section 21000)).

21 (d) The lead agency's review of a reclamation plan submitted
22 pursuant to subdivision (b) or of financial assurances pursuant to
23 subdivision (c) is limited to whether the plan or the financial
24 assurances substantially meet the applicable requirements of
25 Sections 2772, 2773, 2773.1, and 2773.3 and the lead agency
26 surface mining ordinance adopted pursuant to subdivision (a) of
27 Section 2774, but, in any event, the lead agency shall require that
28 financial assurances for reclamation be sufficient to perform
29 reclamation of lands remaining disturbed. Reclamation plans or
30 financial assurances determined to substantially meet these
31 requirements shall be approved by the lead agency for purposes
32 of this chapter. Reclamation plans or financial assurances
33 determined not to substantially meet these requirements shall be
34 returned to the operator within 60 days. The operator has 60 days
35 to revise the plan or financial assurances to address identified
36 deficiencies, at which time the revised plan or financial assurances
37 shall be returned to the lead agency for review and approval. Except
38 as specified in subdivision (e) or (i), unless the operator has filed
39 on or before July 1, 1990, an appeal pursuant to subdivision (e)
40 with regard to nonapproval of the reclamation plan, or has filed

1 on or before January 1, 1994, an appeal pursuant to subdivision
2 (e) with regard to nonapproval of financial assurances, and that
3 appeal is pending before the board, the continuation of the surface
4 mining operation is prohibited until a reclamation plan and
5 financial assurances for reclamation are approved by the lead
6 agency.

7 (e) A person who can substantiate, based on the evidence of the
8 record, that a lead agency has either (1) failed to act according to
9 due process or has relied on considerations not related to the
10 specific applicable requirements of Sections 2772, 2773, 2773.1,
11 and 2773.3 and the lead agency surface mining ordinance adopted
12 pursuant to subdivision (a) of Section 2774, in reaching a decision
13 to deny approval of a reclamation plan or financial assurances for
14 reclamation, (2) failed to act within a reasonable time of receipt
15 of a completed application, or (3) failed to review and approve
16 reclamation plans or financial assurances as required by subdivision
17 (d) or Sections 2772.1 and 2773.4, may appeal that action or
18 inaction to the board. If the director has commented pursuant to
19 Section 2773.4 that a financial assurance cost estimate is
20 inadequate, the director may appeal the lead agency's approval of
21 a financial assurance cost estimate on any of the grounds identified
22 in this subdivision that were included in the director's comments
23 pursuant to Article 7 (commencing with Section 3680) of
24 Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the
25 California Code of Regulations.

26 (f) The board may decline to hear an appeal if it determines that
27 the appeal raises no substantial issues related to the lead agency's
28 review pursuant to this section.

29 (g) Appeals that the board does not decline to hear shall be
30 scheduled and heard at a public hearing within 45 days of the filing
31 of the appeal or a longer period as may be mutually agreed upon
32 by the board and the person filing the appeal. In hearing an appeal,
33 the board shall only determine whether the reclamation plan or the
34 financial assurances substantially meet the applicable requirements
35 of Sections 2772, 2773, 2773.1, and 2773.3 and the lead agency
36 surface mining ordinance adopted pursuant to subdivision (a) of
37 Section 2774. A reclamation plan or financial assurances
38 determined to meet these requirements shall be approved or upheld.
39 A reclamation plan or financial assurances determined not to meet
40 these requirements shall be returned with a notice of deficiencies,

1 to the operator, who shall be granted, once only, a period of 30
2 days, or a longer period mutually agreed upon by the operator and
3 the board, to correct the noted deficiencies and submit the revised
4 reclamation plan or the revised financial assurances to the lead
5 agency for review and approval.

6 (h) (1) Within 90 days of a surface mining operation becoming
7 idle, as defined in Section 2727.1, the operator shall submit to the
8 lead agency for review and approval an interim management plan.
9 The review and approval of an interim management plan shall not
10 be considered a project for purposes of the California
11 Environmental Quality Act (Division 13 (commencing with Section
12 21000)). The approved interim management plan shall be
13 considered an amendment to the surface mining operation's
14 approved reclamation plan for purposes of this chapter. The interim
15 management plan shall provide measures the operator will
16 implement to maintain the site in compliance with this chapter,
17 including, but not limited to, all permit conditions.

18 (2) The interim management plan may remain in effect for a
19 period not to exceed five years, at which time the lead agency shall
20 do one of the following:

21 (A) Renew the interim management plan for an additional period
22 not to exceed five years, which may be renewed for one additional
23 five-year renewal period at the expiration of the first five-year
24 renewal period, if the lead agency finds that the surface mining
25 operator has complied fully with the interim management plan.

26 (B) Require the operator to commence reclamation in accordance
27 with its approved reclamation plan.

28 (3) The financial assurances required by Section 2773.1 shall
29 remain in effect during the period that the surface mining operation
30 is idle. If the surface mining operation is still idle after the
31 expiration of its interim management plan, the operator shall
32 commence reclamation in accordance with its approved reclamation
33 plan.

34 (4) Within 60 days of the receipt of the interim management
35 plan or a longer period mutually agreed upon by the lead agency
36 and the operator, the lead agency shall review and approve the
37 plan in accordance with its ordinance adopted pursuant to
38 subdivision (a) of Section 2774, so long as the plan satisfies the
39 requirements of this subdivision, and so notify the operator in
40 writing. Otherwise, the lead agency shall notify the operator in

1 writing of any deficiencies in the plan. The operator shall have 30
2 days, or a longer period mutually agreed upon by the operator and
3 the lead agency, to submit a revised plan.

4 (5) The lead agency shall approve or deny approval of the
5 revised interim management plan within 60 days of receipt. If the
6 lead agency denies approval of the revised interim management
7 plan, the operator may appeal that action to the lead agency's
8 governing body, which shall schedule a public hearing within 45
9 days of the filing of the appeal or a longer period mutually agreed
10 upon by the operator and the governing body.

11 (6) Unless review of an interim management plan is pending
12 before the lead agency or an appeal is pending before the lead
13 agency's governing body, a surface mining operation that remains
14 idle for over one year after becoming idle, as defined in Section
15 2727.1, without obtaining approval of an interim management plan
16 shall be considered abandoned and the operator shall commence
17 and complete reclamation in accordance with the approved
18 reclamation plan.

19 (i) An enforcement action that may be brought against a surface
20 mining operation for operating without an approved reclamation
21 plan, financial assurance, or interim management plan shall be
22 held in abeyance pending review pursuant to subdivision (b), (d),
23 or (h), or the resolution of an appeal filed with the board pursuant
24 to subdivision (e), or with a lead agency governing body pursuant
25 to subdivision (h).

26 SEC. 6. Section 2772 of the Public Resources Code is amended
27 to read:

28 2772. (a) The reclamation plan shall be filed with the lead
29 agency, on a form provided by the lead agency, by any person who
30 owns, leases, or otherwise controls or operates on all or any portion
31 of any mined lands and who plans to conduct surface mining
32 operations on the lands.

33 (b) The reclamation plan shall include a chart identifying the
34 page number, chapter, appendix, or other specific location in the
35 reclamation plan where content meeting the requirements, as
36 applicable, of Sections 2772, 2773, and 2773.3 is located.

37 (c) The reclamation plan shall include all of the following
38 information and documents:

1 (1) The name and address of the operator and the names and
2 addresses of any persons designated by the operator as an agent
3 for the service of process.

4 (2) The anticipated quantity and type of minerals for which the
5 surface mining operation is to be conducted.

6 (3) The proposed dates for the initiation and completion of
7 reclamation activities for the surface mining operation.

8 (4) The maximum anticipated depth of the surface mining
9 operation.

10 (5) A reclamation plan map or maps that shall include all of the
11 following:

12 (A) Size and legal description of the lands that will be affected
13 by the surface mining operation and the names and addresses of
14 the owners of all surface interests and mineral interests in the lands.

15 (B) Clearly defined and accurately drawn property lines,
16 setbacks, and the reclamation plan boundary.

17 (C) Existing topography and final topography depicted with
18 contour lines drawn at appropriate intervals for the site's
19 conditions.

20 (D) Detailed geologic description of the area of the surface
21 mining operation.

22 (E) Location of railroads, utility facilities, access roads,
23 temporary roads to be reclaimed, and any roads remaining for the
24 approved end use.

25 (F) All maps, diagrams, or calculations that require preparation
26 in accordance with the Professional Engineers Act (Chapter 7
27 (commencing with Section 6700) of Division 3 of the Business
28 and Professions Code), the Geologist and Geophysicist Act
29 (Chapter 12.5 (commencing with Section 7800) of Division 3 of
30 the Business and Professions Code), or the Professional Land
31 Surveyors' Act (Chapter 15 (commencing with Section 8700) of
32 Division 3 of the Business and Professions Code) shall be prepared
33 by a California-licensed professional, shall include his or her
34 license number and name, and shall bear the signature and seal of
35 the licensee.

36 (6) A description of and a plan for the type of surface mining
37 to be employed and a time schedule that will provide for the
38 completion of surface mining on each segment of the mined lands
39 so that reclamation can be initiated at the earliest possible time on

1 those portions of the mined lands that will not be subject to further
2 disturbance by the surface mining operation.

3 (7) A description of the proposed use or potential uses of the
4 mined lands after reclamation and evidence that all owners of a
5 possessory interest in the land have been notified of the proposed
6 use or potential uses.

7 (8) A description of the manner in which reclamation, adequate
8 for the proposed use or potential uses, will be accomplished,
9 including both of the following:

10 (A) A description of the manner in which known contaminants
11 will be controlled and mining waste will be disposed.

12 (B) A description of the manner in which affected streambed
13 channels and streambanks will be rehabilitated to a condition that
14 minimizes erosion and sedimentation.

15 (9) An assessment of the effect of implementation of the
16 reclamation plan on future mining in the area.

17 (10) A statement that the person submitting the reclamation
18 plan accepts responsibility for reclaiming the mined lands in
19 accordance with the reclamation plan.

20 (11) Any other information that the lead agency may require
21 by ordinance.

22 (d) An item of information or a document required pursuant to
23 subdivision (c) that has already been prepared as part of a permit
24 application for the surface mining operation, or as part of an
25 environmental document prepared for the project pursuant to the
26 California Environmental Quality Act (Division 13 (commencing
27 with Section 21000)) may be included in the reclamation plan by
28 reference, if that item of information or that document is attached
29 to the reclamation plan when the lead agency submits the
30 reclamation plan to the director for review. To the extent the
31 information, document, or component of a document referenced
32 in the reclamation plan is used to meet the requirements of
33 subdivision (c) or Section 2773 or 2773.3, the information,
34 document, or component of a document shall become part of the
35 reclamation plan and shall be subject to all other requirements of
36 this article.

37 (e) Nothing in this section is intended to limit or expand the
38 department's authority or responsibility to review a document in
39 accordance with the California Environmental Quality Act
40 (Division 13 (commencing with Section 21000)).

1 SEC. 7. Section 2772.1 is added to the Public Resources Code,
2 to read:

3 2772.1. (a) (1) Prior to approving a surface mining operation's
4 reclamation plan or plan amendment, the lead agency shall submit
5 the reclamation plan or plan amendment to the director for review.
6 The reclamation plan or plan amendment shall be submitted to the
7 director as early as practicable in order to facilitate the review of
8 the reclamation plan pursuant to the California Environmental
9 Quality Act (Division 13 (commencing with Section 21000)). All
10 documentation for the submission shall be submitted to the director
11 at one time.

12 (2) An item of information, document, or component of a
13 document that has been prepared as part of a permit application
14 for the surface mining operation or as part of an environmental
15 document prepared for the project pursuant to the California
16 Environmental Quality Act (Division 13 (commencing with Section
17 21000)) shall be incorporated into the reclamation plan or plan
18 amendment if it is used to satisfy the requirements of subdivision
19 (c) of Section 2772 and Sections 2773 and 2773.3, if applicable.
20 If an item of information, document, or component of a document
21 is incorporated, reference to the item shall be added to the chart
22 required pursuant to subdivision (b) of Section 2772 and shall be
23 properly indexed with the corresponding appendix reference and
24 page numbers, if applicable. The item shall be included in an
25 appendix to and shall become part of the reclamation plan or plan
26 amendment. A technical report created by a California-licensed
27 professional to support variations to the reclamation standards
28 adopted by the board pursuant to Section 2773 shall be included
29 in an appendix to the reclamation plan or plan amendment bearing
30 the California-licensed professional's stamp or seal, as applicable.

31 (3) The lead agency shall certify to the director that the
32 reclamation plan or plan amendment is a complete submission and
33 is in ~~substantial~~ compliance with all of the following:

34 (A) The applicable requirements of this chapter.

35 (B) Article 1 (commencing with Section 3500) of Chapter 8 of
36 Division 2 of Title 14 of the California Code of Regulations.

37 (C) The lead agency's surface mining ordinance in effect at the
38 time that the reclamation plan or plan amendment is submitted to
39 the director for review.

(b) (1) The director shall have 15 days from the receipt of a reclamation plan or plan amendment to notify the lead agency and operator if the submission is incomplete. An incomplete submission is one that does not meet the content requirements of *subdivision (a) of this section and subdivisions (c) and (d) of section 2772 and subdivision (a). Section 2772*. The director's notice shall specifically identify all aspects of the submission that are incomplete. If the submission is incomplete due to the failure to include a professionally stamped copy of a technical report, map, or diagram that is required to be prepared by a California-licensed professional pursuant to subdivision (c) of ~~section~~ *Section 2772*, the director shall request a stamped copy of the technical report, map, or diagram only, instead of a full resubmission of the reclamation plan or plan amendment. The review time required pursuant to paragraph (2) shall begin when the stamped copy of the technical report, map, or diagram is received by the director. The director's time to review the reclamation plan or plan amendment shall commence upon the receipt of a submission that contains the item or items identified in the director's notice to the lead agency.

(2) The director shall have 45 days from the receipt of a complete reclamation plan or plan amendment to prepare written comments if the director chooses. The lead agency shall review and evaluate written comments received from the director relating to the reclamation plan or plan amendment within a reasonable amount of time.

(3) (A) The lead agency shall prepare a written response to the director's comments received pursuant to paragraph (2) describing the disposition of the major issues raised by the comments. The lead agency shall submit its response to the director at least 30 days prior to the intended approval of the reclamation plan or plan amendment. The lead agency's response shall include either of the following:

(i) A description of how the lead agency proposes to adopt the director's comments to the reclamation plan or plan amendment.

(ii) A detailed description of the reasons why the lead agency proposes not to adopt the director's comments.

(B) Copies of any written comments received and responses prepared by the lead agency pursuant to subparagraph (A) shall be forwarded to the operator.

1 (4) (A) The lead agency shall give the director at least 30 days'
2 notice of the time, place, and date of the hearing at which the
3 reclamation plan or plan amendment is scheduled to be approved
4 by the lead agency.

5 (B) If no hearing is required by this chapter, the local ordinance,
6 or other state law, the lead agency shall provide 30 days' notice
7 to the director that the lead agency intends to approve the
8 reclamation plan or plan amendment.

9 (5) (A) Within 60 days following approval of the reclamation
10 plan or plan amendment, the lead agency shall provide the director
11 its final response to the director's written comments and the final
12 approved copies of those documents. During that time, the
13 department retains all of its powers, duties, and authorities pursuant
14 to this chapter.

15 (B) The lead agency's final response shall include an index
16 showing permit conditions of approval and binding mitigation
17 measures adopted or certified pursuant to the California
18 Environmental Quality Act (Division 13 (commencing with Section
19 21000)) that are necessary to meet the requirements of subdivision
20 (c) of Section 2772 and Sections 2773 and 2773.3. Those
21 conditions of approval and mitigation measures shall be included
22 in an appendix to the reclamation plan or plan amendment and
23 shall be considered part of the reclamation compliance
24 requirements and subject to the annual inspection requirements.
25 To the extent those conditions of approval and mitigation measures
26 are not subject to separate lead agency or other state or federal
27 agency bonding or performance requirements, those conditions
28 and measures shall be subject to the financial assurances
29 requirements of this article.

30 (6) No later than 60 days after the approval of the reclamation
31 plan or plan amendment, the lead agency shall provide an official
32 copy of the approved reclamation plan or plan amendment
33 incorporating all approved modifications to the reclamation plan
34 or plan amendment to the director.

35 (c) To the extent there is a conflict between the comments of a
36 trustee agency or a responsible agency that are based on that
37 agency's statutory or regulatory authority and the comments of
38 other commenting agencies that are received by the lead agency
39 pursuant to the California Environmental Quality Act (Division
40 13 (commencing with Section 21000)) regarding a reclamation

1 plan or plan amendments, the lead agency shall consider only the
2 comments of the trustee agency or responsible agency.

3 (d) Nothing in this section is intended to limit or expand the
4 department's authority or responsibility to review a document in
5 accordance with the California Environmental Quality Act
6 (Division 13 (commencing with Section 21000)).

7 SEC. 8. Section 2773.1 of the Public Resources Code is
8 amended to read:

9 2773.1. (a) Lead agencies shall require financial assurances
10 of each surface mining operation to ensure reclamation is
11 performed in accordance with the surface mining operation's
12 approved reclamation plan, as follows:

13 (1) A financial assurance mechanism may take the form of
14 surety bonds executed by an admitted surety insurer, as defined
15 in subdivision (a) of Section 995.120 of the Code of Civil
16 Procedure, irrevocable letters of credit, trust funds, or other forms
17 of financial assurances specified by the board pursuant to
18 subdivision (e) that the lead agency reasonably determines are
19 adequate to perform reclamation in accordance with the surface
20 mining operation's approved reclamation plan.

21 (2) The financial assurances shall remain in effect for the
22 duration of the surface mining operation and any additional period
23 until reclamation is completed.

24 (3) The amount of financial assurances required of a surface
25 mining operation for any one year shall be reviewed and, if
26 necessary, adjusted once each calendar year to account for new
27 lands disturbed by surface mining operations, inflation, and
28 reclamation of lands accomplished in accordance with the approved
29 reclamation plan. An operator shall be required to replace an
30 approved financial assurance mechanism to bond for the
31 reclamation of the surface mining operation only if the financial
32 assurance cost estimate identifies a need to increase the amount
33 of the financial assurance mechanism.

34 (4) Financial assurance cost estimates shall be submitted to the
35 lead agency for review on the form adopted by the board by
36 regulation pursuant to subdivision (f). The estimates shall include
37 estimates of the time needed to complete reclamation of the mine
38 in accordance with the approved reclamation plan, including, but
39 not limited to, any monitoring studies required by the reclamation
40 plan.

1 (5) Each financial assurance mechanism shall be made payable
2 to the lead agency and the department. A financial assurance
3 mechanism shall not be released without the consent of the lead
4 agency and the department. A financial assurance mechanism that
5 was approved by the lead agency prior to January 1, 1993, and
6 was made payable to the State Geologist shall be considered
7 payable to the department for purposes of this chapter. However,
8 if a surface mining operation has received approval of its financial
9 assurances from a public agency other than the lead agency, the
10 lead agency shall deem those financial assurances adequate for
11 purposes of this section, or shall credit them toward fulfillment of
12 the financial assurances required by this section, if they are made
13 payable to the public agency, the lead agency, and the department
14 and otherwise meet the requirements of this section. In any event,
15 if a lead agency and one or more public agencies exercise
16 jurisdiction over a surface mining operation, the total amount of
17 financial assurances required by the lead agency and the public
18 agencies for any one year shall not exceed that amount that is
19 necessary to perform reclamation of lands remaining disturbed.
20 For purposes of this paragraph, a “public agency” may include a
21 federal agency.

22 (b) (1) If the lead agency, or the board when acting as a lead
23 agency, has evidence that an operator may be financially incapable
24 of completing reclamation in accordance with its approved
25 reclamation plan or that the operator may have abandoned the
26 surface mining operation without completing reclamation, the lead
27 agency or board shall conduct a public hearing to determine
28 whether the operator is financially capable of completing
29 reclamation in accordance with the approved reclamation plan or
30 has abandoned the surface mining operation. The hearing shall be
31 noticed to the operator and the director at least 30 days prior to
32 the hearing.

33 (2) If the lead agency or the board, following the public hearing
34 conducted pursuant to paragraph (1), determines that the operator
35 is financially incapable of performing reclamation in accordance
36 with its approved reclamation plan or has abandoned its surface
37 mining operation without completing reclamation, either the lead
38 agency or the director shall do all of the following:

39 (A) Notify the operator by personal service or certified mail
40 that the lead agency or the director intends to take appropriate

1 action to forfeit the financial assurances and specify the reasons
2 for so doing.

3 (B) Proceed to take appropriate action to require forfeiture of
4 the financial assurances.

5 (C) Use the proceeds from the forfeited financial assurances to
6 conduct and complete reclamation in accordance with the approved
7 reclamation plan. If the surface mining operation cannot be
8 reclaimed in accordance with its approved reclamation plan, or
9 the financial assurances are inadequate to reclaim in accordance
10 with its approved reclamation plan, the lead agency or director
11 may use ~~seized~~ *forfeited* financial assurances to reclaim or
12 remediate mining disturbances as appropriate for the site conditions
13 as determined by both the lead agency and the director. The
14 financial assurances shall not be used for any other purpose. The
15 operator is responsible for the costs of conducting and completing
16 reclamation in accordance with the approved reclamation plan or
17 a remediation plan developed pursuant to this section as determined
18 appropriate by both the lead agency and the director that are in
19 excess of the proceeds from the forfeited financial assurances.

20 (c) Financial assurances shall no longer be required of a surface
21 mining operation, and shall be released, upon the written
22 concurrence of the lead agency and the director, which shall be
23 forwarded to the operator and the institutions providing or holding
24 the financial assurance mechanism, that reclamation has been
25 completed in accordance with the approved reclamation plan. If a
26 surface mining operation is sold or ownership is transferred to
27 another person, the existing financial assurances shall remain in
28 force and shall not be released by the lead agency and the director
29 until new financial assurances are secured from the new owner
30 and have been approved by the lead agency in accordance with
31 Sections 2770, 2773.1, and 2773.4. Within 90 days of the sale or
32 transfer of the surface mining operation, the new operator shall
33 establish or maintain an appropriate financial assurance mechanism
34 and sign a new statement of reclamation responsibility in
35 accordance with paragraph (10) of subdivision (c) of Section 2772.

36 (d) The lead agency shall have primary responsibility to seek
37 forfeiture of financial assurances and to reclaim mine sites pursuant
38 to subdivision (b). However, if the board is not the lead agency
39 pursuant to Section 2774.4, the director may act to seek forfeiture

1 of financial assurances and reclaim mine sites pursuant to
2 subdivision (b) only if both of the following occurs:

3 (1) The financial incapability of the operator or the abandonment
4 of the surface mining operation has come to the attention of the
5 director.

6 (2) The lead agency has been notified in writing by the director
7 of the financial incapability of the operator or the abandonment
8 of the surface mining operation for at least 15 days, the lead agency
9 has not taken appropriate measures to seek forfeiture of the
10 financial assurances and reclaim the mine site, and one of the
11 following has occurred:

12 (A) The lead agency has been notified in writing by the director
13 that failure to take appropriate measures to seek forfeiture of the
14 financial assurances or to reclaim the mine site shall result in
15 actions being taken against the lead agency under Section 2774.4.

16 (B) The director determines that there is a violation that amounts
17 to an imminent and substantial endangerment to the public health,
18 safety, or to the environment.

19 (C) The lead agency notifies the director in writing that its good
20 faith attempts to seek forfeiture of the financial assurances have
21 not been successful.

22 The director shall comply with subdivision (b) in seeking
23 forfeiture of financial assurances and reclaiming mine sites.

24 (e) The board may adopt regulations specifying financial
25 assurance mechanisms other than surety bonds, irrevocable letters
26 of credit, and trust funds, which the board determines are
27 reasonably available and adequate to ensure reclamation pursuant
28 to this chapter, but these mechanisms shall not include financial
29 tests or surety bonds executed by one or more personal sureties.
30 These mechanisms may include reclamation bond pool programs.

31 (f) The board shall adopt or revise guidelines to implement this
32 section as necessary. The guidelines are exempt from the
33 requirements of the Administrative Procedure Act (Chapter 3.5
34 (commencing with Section 11340) of Part 1 of Division 3 of Title
35 2 of the Government Code), and are not subject to review by the
36 Office of Administrative Law.

37 SEC. 9. Section 2773.4 is added to the Public Resources Code,
38 to read:

39 2773.4. (a) (1) Prior to approving the financial assurances for
40 a new reclamation plan or adjustments to financial assurances

1 based on an amendment to a reclamation plan, the lead agency
2 shall submit the financial assurance cost estimate to the director
3 for review.

4 (2) The lead agency shall provide the director with a preliminary
5 determination of whether the financial assurance cost estimate
6 submitted pursuant to paragraph (1) is adequate, complete, and
7 consistent with Section 2773.1.

8 (3) All documentation submitted to the director pursuant to this
9 subdivision shall be submitted at one time.

10 (b) No later than ~~15~~ ____ days after receiving a financial
11 assurance cost estimate, the director shall notify the lead agency
12 and the operator if the submission is incomplete. An incomplete
13 submission is one that does not meet the content requirements of
14 Section 2773.1. The director's notice shall specifically identify all
15 aspects of the submission that are incomplete. The director's time
16 to review the financial assurance cost estimate shall commence
17 upon the receipt of a submission that contains the aspects identified
18 in the director's notice to the lead agency.

19 (c) (1) The director shall have ~~45~~ ____ days from the date of
20 receipt of a complete financial assurance cost estimate to prepare
21 written comments if the director chooses.

22 (2) The lead agency shall evaluate written comments received
23 from the director relating to the financial assurances within a
24 reasonable amount of time. The lead agency shall prepare a written
25 response to the director's comments describing the disposition of
26 the major issues raised by the director's comments.

27 (3) The lead agency shall submit its proposed response to the
28 director at least ~~30~~ ____ days prior to approval of the financial
29 assurance cost estimate. The lead agency's response shall include
30 either of the following:

31 (A) A description of how the lead agency proposes to adopt the
32 director's comments to the financial assurance cost estimate.

33 (B) A detailed description of the reasons why the lead agency
34 proposes to reject the director's comments.

35 (4) Copies of any written comments received and responses
36 prepared by the lead agency shall be forwarded to the operator.

37 (5) (A) The lead agency shall give the director at least ~~30~~ ____
38 days' notice of the time, place, and date of the hearing at which
39 the financial assurance cost estimate is scheduled to be approved
40 by the lead agency. If no hearing is required by this chapter, local

1 ordinance, or other state law, then the lead agency shall provide
2 ~~30~~ ___ days' notice to the director that it intends to approve the
3 financial assurance cost estimate.

4 (B) The lead agency shall send to the director its final response
5 to the director's comments within ~~30~~ ___ days following its
6 approval of the financial assurance cost estimate, during which
7 time the department retains all of its powers, duties, and authority
8 pursuant to this chapter.

9 (d) (1) Within ~~30~~ ___ days of an annual inspection being
10 conducted pursuant to Section 2774, an operator shall provide an
11 annual financial assurance cost estimate to the lead agency for
12 review.

13 (2) Within ~~60~~ ___ days of receiving an operator's annual
14 financial assurance cost estimate, the lead agency shall do both of
15 the following:

16 (A) Review the annual financial assurance cost estimate for
17 adequacy and completeness consistent with Section 2773.1.

18 (B) Submit the annual financial assurance cost estimate to the
19 director for review.

20 (3) All documentation submitted to the director pursuant to this
21 subdivision shall be submitted at one time.

22 (4) The lead agency shall provide the director with a preliminary
23 determination of whether the annual financial assurance cost
24 estimate submitted pursuant to this subdivision is adequate,
25 complete, and consistent with Section 2773.1.

26 (5) Within ~~15~~ ___ days of receiving an annual financial
27 assurance cost estimate, the director shall notify the lead agency
28 and the operator if the submission is incomplete. An incomplete
29 submission is one that does not meet the content requirements of
30 Section 2773.1. The director's notice shall specifically identify all
31 aspects of the submission that are incomplete. The director's time
32 to review the annual financial assurance cost estimate shall
33 commence upon the receipt of a submission that contains the
34 aspects identified in the director's notice to the lead agency.

35 (6) (A) Within ~~45~~ ___ days of receiving an operator's complete
36 annual financial assurance cost estimate from the lead agency, the
37 director shall prepare written comments on the operator's financial
38 assurances and provide the comments to the lead agency and the
39 ~~operator~~, *operator* if the director so chooses.

1 (B) Within ~~30~~ ____ days from receiving the director's written
2 comments pursuant to this subdivision, the lead agency shall
3 evaluate the written comments and provide the director and
4 operator its proposed response to the director.

5 (C) Within ~~60~~ ____ days of receiving the director's written
6 comments, or the due date of the director's written comments if
7 they are not received, the lead agency shall accept or reject an
8 operator's annual financial assurance cost estimate. In approving
9 a financial assurance cost estimate, the lead agency, with the
10 concurrence of the operator, may modify the financial assurance
11 cost estimate as necessary to correct deficiencies identified by the
12 director or lead agency.

13 (D) Within ~~30~~ ____ days of the lead agency's acceptance of the
14 annual financial assurance cost estimate, the lead agency shall
15 send the director its final response to the director's comments.

16 (7) If the lead agency determines an operator's annual financial
17 assurance cost estimate is inadequate, the lead agency shall specify
18 the reasons for that determination. The operator shall have ~~30~~ ____
19 days to appeal that denial pursuant to subdivision (e) of Section
20 2770 or provide a revised financial assurance cost estimate
21 incorporating the suggested changes to the director and the lead
22 agency for approval by the lead agency.

23 (e) (1) Within ~~30~~ ____ days of the lead agency's approval of a
24 financial assurance cost estimate pursuant to this section, the
25 operator shall provide the lead agency and the director an
26 appropriate financial assurance mechanism. The operator shall
27 provide this financial assurance mechanism even if the director
28 has appealed the approval pursuant to subdivision (e) of ~~section~~
29 *Section 2770*.

30 (2) Within ~~15~~ ____ days of receiving a financial assurance
31 mechanism pursuant to this subdivision, the lead agency and the
32 director shall review the financial assurance mechanism to
33 determine if the type of mechanism, including the release
34 instructions, meets the requirements of this chapter.

35 (3) A financial assurance mechanism utilizing any of the forms
36 provided as Appendix D, Appendix E-1, Appendix E-2, Appendix
37 E-3, and Appendix F to the guidelines adopted by the board
38 pursuant to subdivision (f) of section 2773.1 shall be deemed to
39 meet the requirements of this chapter. A financial assurance
40 mechanism considered by the lead agency or the director to not

1 meet the requirements of this chapter shall be returned to the
2 operator with correction instructions as to the type and release
3 language of the financial assurance mechanism.

4 SEC. 10. Section 2774 of the Public Resources Code is
5 amended to read:

6 2774. (a) Every lead agency shall adopt ordinances in
7 accordance with state policy that establish procedures for the
8 review and approval of reclamation plans and financial assurances
9 and the issuance of a permit to conduct surface mining operations,
10 except that any lead agency without an active surface mining
11 operation in its jurisdiction may defer adopting an implementing
12 ordinance until the filing of a permit application. The ordinances
13 shall establish procedures requiring at least one public hearing and
14 shall be periodically reviewed by the lead agency and revised, as
15 necessary, to ensure that the ordinances continue to be in
16 accordance with state policy.

17 (b) Surface mining operations shall be inspected annually, solely
18 to determine whether the surface mining operation is in compliance
19 ~~with its reclamation plan as described in subdivision (c) of Section~~
20 ~~2772; this chapter.~~ The lead agency shall cause an inspection to
21 be conducted by a ~~state-licensed~~ *state-licensed* geologist, ~~state~~
22 ~~licensed~~ *state-licensed* civil engineer, ~~state-licensed~~ *state-licensed*
23 ~~landscape architect, state-licensed~~ *state-licensed* forester, or a lead
24 agency employee who is experienced in land reclamation and who
25 has not been employed by the surface mining operation being
26 inspected in any capacity during the previous 12 months, except
27 that a lead agency employee may inspect surface mining operations
28 conducted by another department within the local agency. All
29 inspections shall be conducted using a form developed by the
30 department and approved by the board that includes the
31 professional licensing and disciplinary information of the person
32 who conducted the inspection. The operator shall be solely
33 responsible for the reasonable cost of the inspection. The lead
34 agency shall provide a notice of completion of inspection to the
35 director within 90 days of conducting the inspection. The notice
36 shall contain a statement regarding the surface mining operation's
37 compliance with its approved reclamation plan, as described in
38 ~~subdivision (c) of Section 2772; this chapter;~~ a copy of the
39 completed inspection form, and which aspects of the surface mining
40 operations, if any, are inconsistent with its approved reclamation

1 plan, as described in ~~subdivision (e) of Section 2772~~, *this chapter*,
2 and any corrective measures recommended by the inspector. If the
3 surface mining operation has a review of its reclamation plan,
4 financial assurances, or an interim management plan pending under
5 subdivision (b), (c), (d), or (h) of Section 2770, or an appeal
6 pending before the board or lead agency governing body under
7 subdivision (e) or (h) of Section 2770, the notice shall so indicate.

8 The lead agency shall forward to the operator a copy of the notice,
9 a copy of the completed inspection form, and any supporting
10 documentation, including, but not limited to, any inspection report
11 prepared by the geologist, civil engineer, landscape architect,
12 forester, or lead agency employee who conducted the inspection.

13 (c) If an operator does not request an inspection date on the
14 annual report filed pursuant to Section 2207 or if the lead agency
15 is unable to cause the inspection of a given surface mining
16 operation on the date requested by the operator, the lead agency
17 shall provide the operator with a minimum of five days' written
18 notice of a pending inspection or a lesser time period if agreed to
19 by the operator.

20 (d) (1) No later than April 1 of each year, the director shall
21 provide each lead agency with a notice listing each active or idle
22 surface mining operation within the lead agency's jurisdiction. For
23 each surface mining operation, the director shall request and the
24 lead agency shall provide to the director, on a form provided by
25 the director, no later than July 1 of each year the following
26 information:

27 (A) A copy of any permit or reclamation plan amendments, as
28 applicable.

29 (B) A statement that there have been no changes during the
30 previous year, as applicable.

31 (C) The date of each surface mining operation's last inspection.

32 (D) The date of each surface mining operation's last financial
33 assurance review pursuant to Section 2773.1 for each operation
34 listed.

35 (2) The director shall request similar information on any new
36 or omitted operations, to be provided to the director no later than
37 July 1 of each year.

38 (e) (1) After January 1, 2018, a lead agency employee who is
39 not a state-licensed geologist, state-licensed civil engineer,
40 state-licensed landscape architect, or a ~~state-licensed~~ *state-licensed*

1 forester and who inspects surface mining operations under this
2 chapter shall have completed an inspection workshop or an update
3 workshop provided by the director. The director shall provide an
4 adequate transition time period for lead agency inspectors to
5 complete the update workshop if it becomes necessary.

6 (2) Nothing in this subdivision shall be construed to affect or
7 impose qualifications or standards on employees designated by a
8 local, state, or federal agency to perform inspections of real
9 property under separate provisions of local, state, or federal law,
10 including, but not limited to, the Porter-Cologne Water Quality
11 Control Act (Division 7 (commencing with Section 13000) of the
12 Water Code), the federal Clean Water Act (33 U.S.C. Sec. 1251
13 et seq.), and the Fish and Game Code, notwithstanding the fact
14 that that informational addenda are submitted to lead agencies
15 pursuant to this chapter in addition to reclamation plans, including
16 materials submitted pursuant to subdivision (d) of Section 2772.

17 SEC. 11. Section 2774.2 of the Public Resources Code is
18 amended to read:

19 2774.2. (a) Within 30 days of the issuance of an order setting
20 administrative penalties under subdivision (c) of Section 2774.1,
21 the operator may petition ~~that~~ *the* legislative body of the lead
22 agency, if the lead agency has issued the order, or the board for
23 orders issued by the director, for review of the order. If the operator
24 does not petition for review within the time limits set by this
25 subdivision, the order setting administrative penalties shall not be
26 subject to review by any court or agency.

27 (b) The legislative body of the lead agency or the board shall
28 notify the operator by personal service or certified mail whether
29 it will review the order setting administrative penalties. In
30 reviewing an order pursuant to this section, the record shall consist
31 of the record before the lead agency or the director and any other
32 relevant evidence which, in the judgment of the legislative body
33 or the board, should be considered to effectuate and implement
34 the policies of this chapter.

35 (c) The legislative body or the board may affirm, modify, or set
36 aside, in whole or in part, by its own order an order of the lead
37 agency or the director setting administrative penalties reviewed
38 by the legislative body or the board pursuant to this section.

39 (d) An order of the legislative body or the board issued under
40 subdivision (c) shall become effective upon its issuance unless the

operator petitions the superior court for review as provided in subdivision (e). An order shall be served by personal service or by certified mail upon the operator. Payment of an administrative penalty that is specified in an order issued pursuant to subdivision (c) shall be made to the lead agency or the director within 30 days of service of the order. However, the payment shall be held in an interest bearing impound account pending the resolution of a petition for review filed pursuant to subdivision (e).

(e) An operator aggrieved by an order of the legislative body or the board issued pursuant to subdivision (c) may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the order. An operator aggrieved by an order of a lead agency or the director setting administrative penalties pursuant to subdivision (c) of Section 2774.1, for which the legislative body or board denies review, may obtain review of the order in the superior court by filing in the court a petition for writ of mandate within 30 days following the denial of review. The provisions of Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If the operator does not petition for a writ of mandate within the time limits set by this subdivision, an order of the board or the legislative body shall not be subject to review by any court or agency.

(f) (1) After the expiration of the time to petition for review pursuant to subdivision (a) or (e), the director or the board acting as the lead agency may apply to the small claims court or the superior court, depending on the jurisdictional amount, in the county where the administrative penalty was imposed for a judgment to collect the unpaid administrative penalty imposed pursuant to subdivision (c) of Section 2774.1. The application shall include all of the following:

(A) The order setting the administrative penalty pursuant to subdivision (c) of Section 2774.1.

(B) A notice to the operator of the right to petition for review of the order.

(C) Either of the following:

(i) A declaration from the board that no petition was made or that the board declined to review the petition.

(ii) A copy of the final order of the board.

1 (2) An application submitted pursuant to this subdivision shall
2 constitute a sufficient showing to warrant the issuance of the
3 judgment. The court clerk shall enter the judgment immediately
4 in conformity with the application.

5 (3) The judgment entered pursuant to this subdivision shall have
6 the same force and effect as, and shall be subject to all the
7 provisions of law relating to, a judgment in a civil action and may
8 be enforced in the same manner as any other judgment of the court.
9 The court shall make enforcement of the judgment a priority.

10 SEC. 12. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 a local agency or school district has the authority to levy service
13 charges, fees, or assessments sufficient to pay for the program or
14 level of service mandated by this act, within the meaning of Section
15 17556 of the Government Code.